



1 APPEARANCES: (Continued)

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11 Proceedings recorded by electronic sound  
12 recording; transcript produced by computer-aided  
13 transcription service.

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1           (The following was heard in open court at  
2 10:14 a.m.)

3           THE COURT: Good morning. This is Judge  
4 Robreno and we are on the record. I'm going to try  
5 to call the roll here and see who is -- who is  
6 available. Let's begin with plaintiff. Counsel for  
7 plaintiff, please enter your appearance.

8           MR. STRANGE: Good morning, Your Honor.  
9 This is Brian Strange and John Seglia from the law  
10 firm of Strange & Butler in Los Angeles.

11          THE COURT: Okay.

12          MR. FRICKLETON: Judge, this is James  
13 Frickleton from Bartimus Frickleton Robertson and  
14 Rader in Kansas City.

15          THE COURT: Okay.

16          MR. GRYGIEL: Good morning, Your Honor.  
17 This is Steve Grygiel of Grygiel Law in Baltimore,  
18 Maryland.

19          THE COURT: Okay. I don't have you -- I  
20 don't have you here.

21          MR. GRYGIEL: I need to enter my appearance  
22 and correct it.

23          THE COURT: I'm sorry?

24          MR. GRYGIEL: I haven't filed my entry of  
25 appearance. I just realized this morning.

1           THE COURT: Okay. Well, okay. Now, for --  
2 anybody else for plaintiffs? Okay. For Defendant  
3 Google?

4           MR. WEIBELL: Good morning, Your Honor.  
5 This is Anthony Weibell of Wilson Sonsini Goodrich &  
6 Rosati for Google.

7           THE COURT: Okay. Now, I had also asked  
8 the Attorney General from the State of Arizona to be  
9 on the call as a friend of the Court, and I had also  
10 permitted counsel for objector, Theodore Frank, to be  
11 on the call. They're not parties to these  
12 proceedings, but they are friends of the Court and  
13 they may be asked by the Court during the course of  
14 this telephone conversation to give their input.

15           So let's start with this is a preliminary  
16 scheduling conference on a case that was remanded to  
17 the district court by the Third Circuit with specific  
18 directions as to how to proceed in the case. So the  
19 purpose of this call is to get acquainted and to get  
20 your thoughts and input as to how we should proceed  
21 in the case.

22           So, Mr. Strange, why don't you start off  
23 and give me your view of where we are and where you  
24 would like to go?

25           MR. STRANGE: Thank you, Your Honor. As

1 you probably have seen from the file, this case was  
2 first filed -- our case was first filed in February  
3 of 2012. We then were centered as an MDL in Your  
4 Honor's court. When this case was filed, privacy  
5 actions were at their infancy and not very well-  
6 favored by the Court. We actually are -- the motion  
7 to dismiss by Google for standing was granted, and we  
8 went up to the Third Circuit and had that reversed on  
9 specific grounds and actually made a good law for  
10 privacy actions going forward about standing that  
11 related to data.

12 We then back down to the trial court after  
13 some skirmishes, had a mediation before a retired  
14 federal judge, and agreed to the settlement, which  
15 has been approved and then, as Your Honor has seen,  
16 reversed with directions from the court of appeals.

17 As plaintiff's counsel, we have met and  
18 conferred with Google a few times and believe that we  
19 can come to an agreement to address the court of  
20 appeals' concerns, and really we just would request  
21 that Your Honor continue the status conference for 30  
22 days to allow us to get into more detail about how to  
23 address the issues stated by the Third Circuit and  
24 present a settlement to the Court.

25 THE COURT: Okay. Okay. Anyone else for

1 plaintiff who wishes to be heard? Mr. Frickleton?  
2 You're in a different firm, right?

3 MR. FRICKLETON: Yes, Your Honor, but --

4 THE COURT: Okay.

5 MR. FRICKLETON: -- Mr. Strange speaks for  
6 me also.

7 THE COURT: Okay. So that's the  
8 plaintiff's position --

9 MR. STRANGE: Your Honor --

10 THE COURT: Go ahead. Who is this?

11 MR. STRANGE: Sorry, Your Honor. This is  
12 Mr. -- Brian Strange.

13 THE COURT: Yes.

14 MR. STRANGE: I wanted to explain to the  
15 Court that when the -- when this class action was  
16 MDL-ed, there was a leadership panel, and the Court  
17 ultimately appointed our firm, Mr. Frickleton's firm,  
18 and Mr. Grygiel's firm as co-lead counsel in the  
19 case.

20 THE COURT: Okay. So you're speaking for  
21 the leadership and for all of the plaintiffs who have  
22 been designated as lead plaintiffs, is that right?

23 MR. STRANGE: That is correct, Your Honor.

24 THE COURT: Okay. How about the position  
25 of the defendant, Google?

1 MR. WEIBELL: Good morning, Your Honor. So  
2 we may have related the procedural history of  
3 (indiscernible), but the ultimate ending point is the  
4 same and we are on the same page as plaintiffs in  
5 that we have an agreement now as to how we think we  
6 should proceed in trying to address the issues  
7 presented by the Third Circuit, but we need time to  
8 look through those issues. And so we're in agreement  
9 that a continuance of 30 days would be appropriate  
10 while we try and do that.

11 THE COURT: Okay. Now, let me ask Mr.  
12 Skinner, what's your view and what is the role of the  
13 Arizona Attorney General in this litigation?

14 MR. SKINNER: Sure thing. Thank you, Your  
15 Honor, for allowing me to be on the phone. Our view  
16 is there -- in the existing settlement, there was a  
17 core problem, which was the fact that the settlement  
18 relief was going entirely to third parties cy pres  
19 beneficiaries. When it comes to the fact that the  
20 parties are discussing addressing the Third Circuit's  
21 concerns, obviously we need to see what that looks  
22 like to the extent that if it's still a cy pres-only  
23 settlement, it could probably have concerns, but  
24 obviously it depends on what the details are.

25 As for our role, we receive notice of class

1 action settlements in federal court pursuant to the  
2 Class Action Fairness Act. We have a team that looks  
3 at those and works very hard to find the few during  
4 the year that we believe don't serve the interest of  
5 consumers, and we have a history of filing in both  
6 the district courts, the courts of appeal, and the  
7 U.S. Supreme Court both in individual cases where  
8 we're hoping to improve (indiscernible) for  
9 consumers, and also in cases at the higher levels  
10 where we're concerned about precedent. And we've  
11 taken a very strong interest in these cy pres-only  
12 settlements. We've filed briefs with the U.S.  
13 Supreme Court, we've taken position in this Third  
14 Circuit argument, and so our main concern here is to  
15 ensure that the settlement complies with Rule 23 and  
16 serves the interest of consumers given that to date  
17 at least, the settlement has always been a 50-state  
18 settlement and it covers Arizona consumers.

19 THE COURT: Now, you were an objector to  
20 the settlement, is that right?

21 MR. SKINNER: Not exactly, Your Honor.

22 THE COURT: Okay.

23 MR. SKINNER: We did not take part in the  
24 district court proceedings. We first entered this  
25 case merely as an amicus at the Third Circuit and



1     then --

2                 THE COURT:    Okay.

3                 MR. SKINNER:  -- presented argument to the  
4     Court as an amicus.

5                 THE COURT:    Oh, okay.

6                 MR. SKINNER:  If we were to file anything  
7     here, Your Honor, we would not be purporting to be an  
8     objector within the meaning of the settlement  
9     documents because, normally, we would not be a class  
10    member, but we would historically file an amicus  
11    brief stating our position, much as we did in the  
12    court of appeals.  I will say that in at least one  
13    case where the settlement in the district court was  
14    harming the interest of consumers and had a likely  
15    effect on the State of Arizona's claim -- this was in  
16    Ohio and in the Sixth Circuit -- we did move to  
17    intervene.  But, traditionally, we have filed an  
18    amicus brief to provide the Court with our thoughts  
19    pursuant to what we believe is the primary role under  
20    the Class Action Fairness Act.

21                THE COURT:    Now, are there any other states  
22    involved?

23                MR. SKINNER:  At the Third Circuit, Your  
24    Honor, we had a bipartisan coalition of states.  And  
25    I'm forgetting the number.  I don't have the notes in

1 front of me, but I'd say it was more than ten, less  
2 than 20. Normally, once it gets down to an actual  
3 settlement agreement and the terms are concrete and  
4 known, many states come together, but at this early  
5 stage, I'm -- we're the only state who's here to see  
6 what happens next.

7 THE COURT: So you're here to monitor --

8 MR. SKINNER: (Indiscernible) --

9 THE COURT: -- to monitor the litigation?

10 MR. SKINNER: Yes, Your Honor, and in large  
11 part, to figure out whether, in light of the Third  
12 Circuit's guidance, there is going to be a modified  
13 settlement, no settlement, entirely different  
14 settlement. Given that we took part at the Third  
15 Circuit, given the instructions that the Third  
16 Circuit provides and the centrality of those issues  
17 to what we see as a problem in the consumer class  
18 action (indiscernible), it was really important to  
19 our office to make sure that we watch and comment on  
20 the implementation of the Third Circuit's order on  
21 remand.

22 THE COURT: Okay, thank you. Let's see,  
23 Mr. Schulman, you were an objector both below and in  
24 the Third Circuit. So what's your role?

25 MR. SCHULMAN: Well, I -- we see it sort of

1 a similar observatory role that the AG sees until  
2 there's some concrete terms that are laid out that we  
3 could review. But we don't intend to intervene in  
4 the litigation currently.

5 THE COURT: Okay.

6 MR. SCHULMAN: And then if there was  
7 another proposed settlement that was cy pres-only, we  
8 would assess at that time.

9 THE COURT: Okay. Now, I'm looking at the  
10 opinion of the Third Circuit, and no one has so far  
11 mentioned the Third Circuit's conclusion that the  
12 district court's order certifying the class involved  
13 a " cursory certification and fairness analysis,"  
14 which are insufficient for us to review its order  
15 certifying the class and approving the settlement.  
16 So I get the point about a potential settlement in  
17 this case, but I haven't heard anything about the  
18 issue of whether this is an appropriate class that  
19 meets the requirements of 23(b)(2). So what's your  
20 position there, Mr. Strange?

21 MR. STRANGE: Well, Your Honor, I think  
22 that this is part of the discussions we're having  
23 with Google, but we anticipate -- at least plaintiffs  
24 do -- reviewing whether this settlement should be  
25 presented to the Court as a 23(b)(3) class on damages

1 and addressing that issue there. I think that  
2 ultimately the settlement agreement didn't provide --  
3 the one that was overturned by the court of appeals  
4 didn't provide whether it was (b) (2) or (b) (3), so  
5 that is an issue that we intend to address in the  
6 next settlement and certainly to present enough  
7 evidence to the Court that you could conduct a  
8 fairness evaluation of the settlement.

9 THE COURT: Okay. So you would anticipate  
10 at some point a fairness hearing on certification  
11 together with, if that comes about, approval of a  
12 potential settlement?

13 MR. STRANGE: Yes, Your Honor, what I would  
14 anticipate is to the extent that the plaintiff class  
15 and Google can agree on the terms of the settlement,  
16 that settlement would be presented to Your Honor  
17 along with sufficient evidence for the Court to  
18 determine whether the settlement is a fair settlement  
19 for the class, and that would also allow anybody --  
20 claiming class members, such as Mr. Frank or the AG  
21 from Arizona, to review the evidence to see what  
22 position they have on the settlement. So that's how  
23 we intend on addressing the Court's concern, is  
24 considering those when we try to put together a  
25 settlement and how we present it to the Court so that

1 we can address the issues raised by the Third  
2 Circuit, including what you just mentioned.

3 THE COURT: Okay. Well, I see no issue in  
4 deferring for 30 days and see what happens at that  
5 point. I think that what probably you should do is  
6 to -- within 30 days, to update me by way of a letter  
7 to chambers from the parties, and we will at that  
8 point then, depending upon what the letter says, set  
9 up a conference maybe in person at that point. But  
10 let me -- let me at least take a preliminary look at  
11 what your -- what you have in mind. So why don't I  
12 enter an order continuing the preliminary hearing and  
13 asking that there be a joint, written submission to  
14 the Court within 30 days? Okay? Anybody --

15 MR. STRANGE: Yes, Your Honor.

16 THE COURT: -- has anything else they would  
17 like to bring up? Okay.

18 MR. WEIBELL: Hi, Your Honor, this is  
19 Anthony Weibell for Google.

20 THE COURT: Yes?

21 MR. WEIBELL: Just one housekeeping type of  
22 issue, which is given that many of us are based on  
23 the west coast and this action has been MDL-ed there  
24 on the east coast, for any future status conference,  
25 it would be greatly appreciate, if possible, if we

1 could have the conference take place in the afternoon  
2 in east coast time, so that it's in the morning west  
3 coast time, rather than -- rather than too early in  
4 the morning for some of us.

5 THE COURT: Okay. What is it 7:00 there  
6 now?

7 MR. WEIBELL: Yes, Your Honor.

8 THE COURT: Okay. Okay, we'll keep that in  
9 mind. Anything else? Okay, very well. So we'll --

10 MR. SKINNER: Your Honor, this is Mr.  
11 Skinner in Arizona.

12 THE COURT: Yes?

13 MR. SKINNER: I would just -- is it  
14 something the Court might consider doing to post the  
15 joint letter to the docket?

16 THE COURT: Yes, I think that may be --  
17 that may be. But let me get the letter first. And  
18 unless there is a reason why that shouldn't be done,  
19 I have no problem with that.

20 MR. SKINNER: Okay. Thank you, Your Honor.

21 THE COURT: Okay. Anything else from  
22 anyone? So -- okay. Well, thank you. And thank you  
23 those of you who had to get up early to participate  
24 in the conference, and look forward to working with  
25 you and bringing -- landing this case in a

1       satisfactory fashion for everyone. Okay, very good.

2       Thank you.

3               ALL: Thank you, Your Honor.

4               (Proceedings adjourned, 10:32 a.m.)

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CERTIFICATION

I, Michael Keating, do hereby certify that  
the foregoing is a true and correct transcript from the  
electronic sound recordings of the proceedings in the  
above-captioned matter.

10/31/19

Date

A handwritten signature in black ink, reading "Michael T. Keating", written over a horizontal line.

Michael Keating